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PTO/SB/21 (09-04)

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## TRANSMITTAL FORM

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Total Number of Pages in This Submission

56

Application Number

09/478,131

Filing Date

January 5, 2000

First Named Inventor

Joseph Nardoza

Art Unit

1711

Examiner Name

Umakant K. Rajguru

Attorney Docket Number

MAT 3C2B

### ENCLOSURES (Check all that apply)



Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)



Reply to Missing Parts/  
Incomplete Application



Reply to Missing Parts  
under 37 CFR 1.52 or 1.53



Drawing(s)



Licensing-related Papers



Petition



Petition to Convert to a  
Provisional Application



Power of Attorney, Revocation



Change of Correspondence Address



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Request for Refund



CD, Number of CD(s) \_\_\_\_\_



Landscape Table on CD



After Allowance Communication to TC



Appeal Communication to Board  
of Appeals and Interferences



Appeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)  
(BRIEF FOR APPELLANTS in triplicate)  
Proprietary Information



Status Letter



Other Enclosure(s) (please identify  
below):

Remarks

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Kolisch Hartwell, P.C.

Signature

Printed name

David S. D'Ascenzo

Date

June 24, 2005

Reg. No.

39,952

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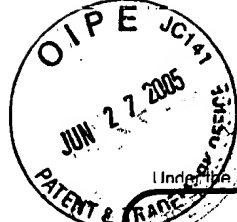
David S. D'Ascenzo

Date

June 24, 2005

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PTO/SB/17 (12-04)

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ ) 500.00

## Complete if Known

Application Number	09/478,131
Filing Date	January 5, 2000
First Named Inventor	Joseph Nardozza
Examiner Name	Umakant K. Rajguru
Art Unit	1711
Attorney Docket No.	MAT 3C2B

## METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_

☒ Deposit Account Deposit Account Number: 11-1540 Deposit Account Name: Kolisch Hartwell, P.C.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

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## FEE CALCULATION

### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

### 2. EXCESS CLAIM FEES

Fee Description	Small Entity Fee (\$)	Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

**Total Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**      **Multiple Dependent Claims**  
\_\_\_\_\_ - 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
HP = highest number of total claims paid for, if greater than 20  
**Indep. Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**  
\_\_\_\_\_ - 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
HP = highest number of independent claims paid for, if greater than 3

### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

**Total Sheets**      **Extra Sheets**      **Number of each additional 50 or fraction thereof**      **Fee (\$)**      **Fee Paid (\$)**  
\_\_\_\_\_ - 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

### 4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)  
Other: **FEE FOR FILING A BRIEF IN SUPPORT OF AN APPEAL**      **Fees Paid (\$)**      500.00

## SUBMITTED BY

Signature		Registration No. 39,952 (Attorney/Agent)	Telephone (503) 224-6655
Name (Print/Type)	David S. D'Ascenzo		Date June 24, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Date: June 24, 2005

In re Application of:

JOSEPH NARDOZZA, LAWRENCE MASS,

SUSAN A. REYES and ABIMAELO MAELO CORDOVA

Our Ref.: MAT 3C2B

Serial No. : 09/478,131

Group Art Unit: 1711

Filed : January 5, 2000

Examiner: Umakant K. Rajguru

For : FLUID-SWELLABLE COMPOSITION, DEVICE AND  
METHOD FOR USING THE SAME

Mail Stop Appeal Briefs – Patents

Commissioner for Patents

P. O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

**BRIEF FOR APPELLANTS**

This is an appeal from the Examiner's final rejection of claims 1-9 and 11-25 in the final Office action dated November 4, 2004, and in the Advisory Action Before the Filing of an Appeal Brief dated April 12, 2005. This appeal brief is being submitted in triplicate with the required fee.

**I. REAL PARTY IN INTEREST**

Mattel, Inc., a Delaware corporation having its principal place of business at 333 Continental Boulevard, El Segundo, California 90245-5012, U.S.A., is the assignee of U.S. Patent Application Serial No. 09/478,131 and the real party in interest.

**II. RELATED APPEALS AND INTERFERENCES**

There are no known related appeals or interferences.

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### **III. STATUS OF CLAIMS AND GROUNDS FOR REJECTIONS**

Claims 1-9 and 11-25 are presently pending in the application and stand rejected. Claims 1-3, 6, 8-22, and 24-25 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,837,077 to Anton et al. ("Anton"), in view of U.S. Patent No. 5,532,350 to Cottrell et al. ("Cottrell") and U.S. Patent No. 6,376,034 to Brander ("Brander"). Claims 4-5 and 23 stand rejected under 35 U.S.C. § 103(a) as being obvious over Anton in view of Cottrell and Brander, and further in view of U.S. Patent No. 5,647,300 to Tucker or U.S. Patent No. 6,545,195 to Chmielewski. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being obvious over Anton in view of Cottrell and Brander, and further in view of U.S. Patent No. 4,622,920 to Goss. The rejections of pending claims 1-9 and 11-25 are traversed, and, accordingly, all presently pending claims are on appeal.

### **IV. STATUS OF AMENDMENTS**

The present application was filed on January 5, 2000 with original claims 1-19. In Applicants' July 6, 2004 response to the first Office action, claim 10 was cancelled without prejudice, claims 1, 12-13, and 15-17 were amended, and new claims 20-28 were added. In Applicants' March 4, 2005 response to the final Office action, claim 15 was amended, and claims 26-28 were cancelled without prejudice after being withdrawn from consideration as directed to an invention which is distinct from the originally claimed invention.

Applicants' March 4, 2005 response included an amendment after final rejection. The amendment was entered. No additional amendments are pending.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The claims of the present application are directed to absorbent compositions for use in a children's amusement device. The absorbent composition consists essentially of a granular mixture that comprises a superabsorbent polymer, a gum, gelatin, and a binder. As recited in claims 4-8 and 21-23, the composition may further include a preservative (page 7, lines 5-18), a plurality of reflective particles such as glitter (page 9, line 20 and page 10, lines 4-17), and/or a colorant, including a colorant having a color that is not readily perceivable until a water-based fluid is added to the composition (page 9, line 20). Other specifically claimed compositions include ranges of percentages of one or more of the above components and illustrative species of the above components.

As described in the specification, the components of the absorbent composition for use in a children's device are each granular (page 7, line 20). These granular components are mixed together to form a granular mixture (page 8, lines 1-2). In use in a children's amusement device, the claimed absorbent composition may absorb a large volume of water-based fluid, and may expand and grow, giving it a life-like, magical appearance which children find to be fun and captivating (page 10, lines 12-15).

The appearance of the absorbent composition may be enhanced by the addition of reflective particles and/or colorant. Added reflective particles may be transported, along with other components, as the composition expands and grows upon addition of a water-based fluid. The reflective particles may give the composition a glittering, sparkling resemblance to crystals or gems (page 10, lines 4-17). The addition of colorant may allow a user to selectively color portions of the children's amusement device. The color of the colorant may not be apparent until a fluid is added to the composition, thus giving the composition an even greater magical quality

and play value, such as when a child is surprised when different samples of white “magic crystal powder” come to vibrantly colored life upon the addition of a fluid (page 12, line 1-6).

#### **VI. ISSUE**

Whether claims 1-9 and 11-25 were improperly rejected under 35 U.S.C. § 103(a) over the cited prior art.

#### **VII. GROUPING OF CLAIMS**

Relative to the above issue, all appealed claims stand together in the sense that the rejection of all pending claims will be overcome when the rejection of claim 1 as being obvious over Anton in view of Cottrell and Brander is withdrawn. Otherwise, the claims do not stand or fall together but instead are believed to be separately patentable.

#### **VIII. ARGUMENT**

Issue: Section 103(a) Rejection of Claim 1 as Being Obvious over Anton in view of Cottrell and Brander

Rejected independent claim 1 is directed toward an absorbent composition for use in a children’s amusement device. Claim 1 is presented below:

1. An absorbent composition for use in a children’s amusement device, the composition consisting essentially of a granular mixture comprising a superabsorbent polymer, a gum, gelatin and a binder.

As discussed in more detail in the specification at page 7, lines 19-20, the composition of claim 1 is formed by mixing together granular components including a polymer, a gum, gelatin, and a binder. During play use, the essentially granular composition is deposited, or spread, onto the base of a play structure. With the addition of a fluid, the composition grows and expands

upwardly to fill the shape of the play structure. For example, see page 16, lines 15-18, of Applicants' specification.

Independent claim 1 stands rejected under 35 U.S.C. § 103(a) as being obvious. The Examiner's reasoning for rejecting claim 1 based on Anton in view of Cottrell and Brander in the first Office action (and maintained in the subsequent final Office action and advisory action) is presented below:

Anton describes a hydroexpansible composite material, which includes a solid flat support having a coating containing a hydroexpansible polymer powder, hydrosoluble binder and a surfactant (abstract). Hydroexpansible polymer reads on instantly claimed super absorbent polymer (col. 2, lines 32-40)... .

Anton is silent about gum & gelatin (of instant claim 1).

Cottrell describes crosslinked polysaccharides useful as absorbent materials.

Brander discloses absorbent material, which is made of a composition including a non-crosslinked gel-forming polymer, clay and a trivalent cation (abstract). A suitable polymer is gelatin (col. 4, lines 26).

Therefore it would have been obvious to include in the composite material of Anton (a) gum of Cottrell to enhance absorbency and (b) gelatin of Brander to enhance gel strength together with absorbency.

Applicants have studied the cited references in detail and continue to respectfully traverse and request withdrawal of the rejection of at least claim 1 because the Examiner has failed to establish a *prima facie* case of obviousness. In order to establish a *prima facie* case of obviousness, the Examiner must satisfy three basic criteria: A. The prior art references must teach or suggest all of the claim limitations; B. There must be some suggestion or motivation to modify the reference or to combine reference teachings to arrive at the claimed invention; and C. There must be a reasonable expectation of success. See MPEP § 2143. Applicants suggest that the Examiner has failed to satisfy these criteria, and therefore has failed to establish the *prima facie* obviousness of claim 1.

A. The cited references of Anton, Cottrell and Brander are not all permissible § 103(a) prior art references, and taken together do not teach or suggest all the elements of claim 1.

1. At least Cottrell and Brander are non-analogous art and thus are not permissible prior art references for § 103(a) analysis.

The Examiner has admitted that Cottrell and Brander are non-analogous art to the present application. In the advisory action, the Examiner stated that “Applicants’ argument that Cottrell and Brander are non-analogous art to the present application is true; they do not have to be analogous to the present application. They have to be combinable with Anton.” Therein, the Examiner erroneously maintained that both Cottrell and Brander could be used in the §103(a) rejection of claim 1, despite that fact that these references were non-analogous art to the present application.

In the final Office action, the Examiner stated that Cottrell and Brander were used as secondary references and relied upon only for their specific disclosures. While Applicants agree that secondary reference Cottrell discloses an absorbent material that includes a gum, and that secondary reference Brander discloses an absorbent composition that includes a gelatin, Applicants disagree that the admittedly non-analogous art references can be used as even secondary references in a § 103(a) obviousness rejection of above-presented claim 1.

Only analogous art is relevant in a § 103(a) consideration of obviousness. See, e.g., Wang Laboratories, Inc. v. Toshiba Corp., 993 F.2d 858, (Fed. Cir. 1993), (memory for industrial computers not analogous art to memory for personal computers and, as such, is not relevant to a consideration of obviousness under § 103). A person of reasonable skill in the art of creating children’s toys would not reasonably be expected to combine non-analogous art references. As the Examiner has admitted that Cottrell and Brander are non-analogous art, these



references may not be combined with Anton, or any other reference, to establish *prima facie* obviousness of claim 1.

2. None of the cited references teach or suggest all the recited elements of claim 1.

None of the references of Anton, Cottrell, or Brander, either alone or in combination, teach or suggest each of the elements recited in claim 1. In sharp contrast to the essentially granular mixture for use in a children's amusement device of claim 1, primary reference Anton is directed to a paste sealant for coating cables. Anton discloses a paste composite material that includes a superabsorbent polymer and a binder. The paste is created, in part, by dissolving a binder in a liquid, and subsequently mixing in a polymer powder to form a paste. See Anton, column 3, lines 42-46, and column 4, lines 10-26. Anton specifically teaches that the "viscosity of the coating paste of the invention is adjusted ... so that the coating layer obtained is even and adheres well to the support." See Anton, column 4, lines 22-26. Anton does not teach or suggest a composite material that is in any physical form other than paste, and more specifically, fails to disclose or suggest any mixture in a granular, or essentially granular, physical form.

Additionally, Anton fails to suggest a mixture, much less a granular mixture. While the paste composite material disclosed in Anton may arguably include a superabsorbent polymer (hydroexpansible polymer powder) and a binder (hydrosoluable binder), in addition to a surfactant, these elements are not mixed, and thus, do not result in a mixture. Due to the intended use in coating cables, Anton's composite material is a paste adapted for fixation onto a flat support surface. More specifically, the composite material disclosed in Anton is simply a hydroexpandable polymer powder fixed onto a flat support by means of a hydrosoluble binder. This binder is not granular, and the binder is not mixed with the polymer. As clearly stated in Anton at column 2, lines 57-60, the "binder is chosen from the hydrosoluble agents capable of

fixing the chosen polymer powder on the chosen support.” As such, the binder only serves to bind the polymer to the operable surface. The elements of the Anton composite are not mixed together, only the polymer is a granular powder, and the entire composition of Anton is a paste.

Accordingly, Applicants disagree with the Examiner’s assertion in the advisory action that the composite paste of Anton can be a granular mixture. In this advisory action, the Examiner stated that:

Anton discloses a composite material or a composition which can (be) used in the form of a paste. Paste denotes nothing more than a physical form of the composite. As mentioned in the final rejection of 11/04/2004, the final mixture is granular; that does not necessarily mean that every component of that mixture has to be granular. Also even if one or more components happen to be non-granular the final mixture can be made in a granular form.

As discussed above, the final composite of Anton is not an essentially granular mixture, but a paste. Claim 1 specifically recites a “composition consisting essentially of a granular mixture,” and thus, claims the granular physical form. Anton specifically discloses a paste comprised of a non-uniformly mixed combination of elements. In opposition to the Examiner’s assertions, Anton fails to suggest, but rather teaches away from, a composite material having an essentially granular physical form.

Furthermore, the impermissible combination of Anton with non-analogous prior art Cottrell and Brander fail to result in the composition recited in claim 1, or to render claim 1 obvious. As discussed in detail above, the composite material of Anton is a paste. While Cottrell discloses a gum, and Brander discloses a gelatin, combining the paste of Anton with these secondary references would fail to transform this paste into the “composition consisting essentially of a granular mixture,” much less the granular mixture of claim 1.

- B. The references do not contain any suggestion or motivation to combine Anton, Cottrell, and Brander to arrive at the granular composition of claim 1.

In order to make a *prima facie* case of obviousness, the teaching or suggestion to make the claim 1 combination must be found in the cited prior art. See, e.g., In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991), as cited in MPEP § 2143. Anton does not suggest the inclusion of the gum of Cottrell, or the gelatin of Brander, in the disclosed cable-coating sealant. Perhaps more specifically, there is no teaching in Anton why the disclosed cable-coating paste could, much less should, include a gum or gelatin. Neither of these additional components appears to be desirable or necessary for the disclosed cable-coating paste of Anton, which perhaps explains why there is no teaching or motivation in Anton to include these additional components.

In a similar manner, neither Cottrell nor Brander provides the required teaching or motivation to extract specific components from these references and combine them with the cable-coating paste of Anton. Cottrell and Brander both disclose solid absorbents, with Cottrell being directed to a solid absorbent for diapers and feminine products, and Brander being directed to a solid absorbent for food storage pouches. It follows that the composition of these solid absorbents, which are not coated upon other objects and which are not required to adhere to solid supports, would at best undermine the required functionality of the paste of Anton. Thus, the requisite teaching or suggestion is lacking.

Applicants further submit that in addition to failing to provide the required teaching or motivation, the primary and secondary references teach away from the combination proposed by the Examiner. For example, Anton specifically teaches away from the inclusion of components that are not directly used to absorb water or secure the absorbent polymer to a substrate. Neither gum nor gelatin is required to either absorb water, or to secure the polymer to a substrate. Instead, as in the absorbent composition for use in a children's amusement device of claim 1,

gum and gelatin add to “play value” by giving the composition a life-like appearance when a child adds water to the composition. Not only is this gel-like appearance and play value out of place in shielding for electrical cables, Anton specifically teaches away from the inclusion of such additives.

Furthermore, Anton teaches away from the essentially granular mixture composition recited in claim 1. As the intended purpose of Anton is to coat cables with an absorbent sealant, the composition must be fixed to a surface of the cable. The essentially granular composition of claim 1 would be inoperable for Anton’s cable coating purpose.

As none of the cited references contain any motivation, incentive, suggestion, or teaching that would lead one of ordinary skill in the art to create the combination of elements recited in claim 1, and the combination of cited references would produce an inoperable result, the Examiner is impermissibly rejecting claim 1 using hindsight reconstruction. See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999), In re Paulsen, 30 F.3d 1475, 1482 (Fed. Cir. 1994), and Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 (Fed. Cir. 1986). The Federal Circuit further clarified that hindsight vision is impermissible in McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 60 USPQ2d 1001 (Fed. Cir. 2001), in stating that:

We have noted elsewhere, as a ‘useful general rule,’ that references that teach away cannot serve to create a prima facie case of obviousness. If references taken in combination would produce a ‘seemingly inoperative device,’ we have held that such references teach away from the combination and thus cannot serve as predicates for a prima facie case of obviousness.

Id. at 1354 (citations omitted). Thus, it is impermissible to consider an inoperable combination of references as rendering a claim obvious under 35 U.S.C. § 103(a).

C. The cited references do not provide a reasonable expectation of success.

As discussed above, the Examiner's suggested combination of Anton, Cottrell, and Brander would yield an inoperable result. Even if these references were permissibly combined, there is no reasonable expectation that the combination would successfully result in the absorbent composition for use in a children's amusement device of claim 1. Rather, there is a reasonable expectation of failure, as one skilled in the art may likely conclude that the Examiner's suggested combination of references would render an inoperable cable sealant paste including gum and gelatin.

For at least the reasons stated above, Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness, and that the rejection of claim 1 should therefore be withdrawn. In suggesting a combination including non-analogous art, the Examiner has failed to show a combination of analogous prior art references which teach or suggest all the limitations of claim 1, teach or suggest a combination which would result in the absorbent composition for use in a children's device of claim 1, or support a reasonable expectation of success. Accordingly, Applicants request that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn.

Claims 2-9 and 11-25 depend from claim 1. Therefore, claims 2-9 and 11-25 should be allowed upon allowance of claim 1.

Issue: Section 103(a) Rejection of Claims 4-5 and 23 as Being Obvious over Anton in view of Cottrell and Brander, and in further view of either Tucker or Chmielewski

Claims 4 depends from claim 1 and recites that the composition further includes a colorant. Claim 5 depends from claim 1 and recites that the composition further includes a plurality of reflective particles. Claim 23 depends from claim 1 and further recites that the composition further includes a colorant and a plurality of reflective particles. In the Office action, these claims were rejected as being obvious over the previously proposed combination of Anton with Cottrell and Brander, in further combination with either Tucker or Chmielewski.

The rejections are only discussed in the first Office action, the relevant portion of which is reproduced below for the Board's convenience:

Anton together with Cottrell and Brander fails to mention colorant & many reflective particles of instant claims 3 & 4[sic, 4 and 5].

Tucker discloses absorbent such as animal litter in which a colorant is added as an additive (col.28 line 36).

Chmielewski discloses absorbent article in which a colorant is added as an additive (col. 16, line 2).

Hence it would have been obvious to add a colorant to the material of Anton to impart a specific color for better appearance, and identification. Such a colorant may be reflective in nature like metallic particles.

Applicants respectively traverse and request reversal of the rejections of claims 4-5 and 23. In addition to the reasons discussed above with respect to claim 1, the rejections of these claims also fail to satisfy the above-discussed standard for obviousness. Specifically, the Examiner's position is that it would have been obvious to further modify the cable-coating paste of Anton to include a colorant. The Examiner's further position is that colorant could be reflective and that it would therefore be obvious to add metallic particles to the cable-coating paste of Anton. Applicants submit that there is no teaching or motivation in any of the cited references to include colorant or reflective particles to the composition of Anton. This is perhaps most apparent from the fact that Anton is specifically directed to an internal coating for cables. As such, the presence or lack of colorant to this internal structure should not be detectable. It follows then that there is no need for the proposed inclusion of a colorant to the cable-coating paste of Anton. For at least this additional reason, Applicants request reversal of the rejections of claims 4 and 23. With respect to claim 5, Applicants respectfully traverse the Examiner's rejection of the claim based on the position that colorants may be reflective and therefore Tucker and Chmielewski support the inclusion of reflective particles into the cable-coating composition of Anton. Applicants further submit there is absolutely no teaching or motivation provided to

include metallic or other reflective particles into a paste that is used to coat electric cables. Accordingly, Applicants also request reversal of the rejection of claims 5 and 23.

Issue: Section 103(a) Rejection of Claims 6 and 21 as Being Obvious over Anton in view of Cottrell and Brander

Claim 6 depends from claim 5 and recites that the reflective particles include glitter. Claim 21 depends from claim 4 and further recites that the colorant has a color that is not readily perceivable to a user until a water-based fluid is added to the composition. Both of these claims stand rejected under 35 U.S.C. § 103(a) as being obvious over the originally proposed combination of Anton with Cottrell and Brander. However, the claimed inclusion of glitter or a colorant whose color is not perceivable by a user until after the addition of a water-based fluid is not disclosed anywhere in the first, second or advisory actions. Applicants submit that this is because the cited references fail to disclose either of these claimed elements. In fact, none of the five cited references disclose these claimed elements. At best, Tucker and Chmielewski, which were not even used to reject these claims, each mention the word “colorant” once in their entire specifications along with a laundry list of additives. However, neither of these references, nor the primary cited references, provides any disclosure or suggestion of a colorant whose color is not apparent until after the addition of a water-based fluid. The references similarly fail to disclose or suggest the inclusion of glitter. As such, Applicants submit that the rejections of these claims as being obvious over the references of record are improper. Applicants further submit that Anton teaches away from the proposed inclusion of these features into an internal cable-coating paste. Applicants therefore request reconsideration and reversal of the rejections of claims 6 and 21 for at least these additional reasons.

### Argument Conclusion

Applicants submit that the above discussion clearly demonstrates that the rejection of claims 2-9 and 11-25 under 35 U.S.C. § 103(a) was improper, and that all presently pending claims patentably distinguish the references of record. Therefore, Applicants request that the Examiner's rejection of the pending claims be reversed.

### **IX. CLAIMS APPENDIX**

1. (Previously Presented) An absorbent composition for use in a children's amusement device, the composition consisting essentially of a granular mixture comprising a superabsorbent polymer, a gum, gelatin and a binder.

2. (Original) The composition of claim 1, wherein the binder includes a film-forming resin.

3. (Original) The composition of claim 2, wherein the resin includes a copolymer of vinylpyrrolidine and vinyl acetate.

4. (Original) The composition of claim 1, wherein the composition further includes a colorant.

5. (Original) The composition of claim 1, wherein the composition further includes a plurality of reflective particles.

6. (Original) The composition of claim 5, wherein the reflective particles include glitter.

7. (Original) The composition of claim 1, wherein the composition further includes a preservative.

8. (Original) The composition of claim 7, wherein the preservative includes preserving agents selected to preserve the composition in a dry and a liquid state.



9. (Original) The composition of claim 1, wherein the composition has a pH in the range of approximately 7-7.5.

10. (Cancelled)

11. (Original) The composition of claim 1, wherein the superabsorbent polymer contains no water-extractable material.

12. (Previously Presented) The composition of claim 1, wherein the superabsorbent polymer consists essentially of particles in the range of approximately 100 microns and approximately 300 microns in maximum diameter.

13. (Previously Presented) The composition of claim 1, wherein the superabsorbent polymer consists essentially of particles in the range of approximately 175 microns and approximately 225 microns in maximum diameter.

14. (Original) The composition of claim 1, wherein the gum is selected to absorb glycols.

15. (Previously Presented) The composition of claim 1, wherein the gum is guar gum.

16. (Previously Presented) The composition of claim 2, including superabsorbent polymer, gum, gelatin and film-forming resin in the ranges of percentages by weight listed:

Component	Percentage (wt %)		
superabsorbent polymer	30	to	55
gum	1	to	10
gelatin	20	to	50
film-forming resin	5	to	25

17. (Previously Presented) The composition of claim 2, including superabsorbent polymer, gum, gelatin and film-forming resin in the ranges of percentages by weight listed:

Component	Percentage (wt %)		
superabsorbent polymer	35	to	55
gum	1.5	to	10
gelatin	25	to	45
film-forming resin	10	to	20

18. (Original) The composition of claim 2, further including glitter, colorant and preservative, wherein the superabsorbent polymer, gum, gelatin, film-forming resin, glitter, colorant and preservative are in the ranges of percentages by weight listed:

Component	Percentage (wt %)		
superabsorbent polymer	15	to	45
gum	0.5	to	5
gelatin	15	to	35
film-forming resin	2	to	20
preservative	0.5	to	15
glitter	5	to	30
colorant	0.01	to	5

19. (Original) The composition of claim 2, further including glitter, colorant and preservative, wherein the superabsorbent polymer, gum, gelatin, film-forming resin, glitter, colorant and preservative are in the ranges of percentages by weight listed:

Component	Percentage (wt %)		
superabsorbent polymer	25	to	40
gum	0.5	to	3
gelatin	20	to	30
film-forming resin	5	to	15
preservative	1	to	10
glitter	10	to	25
colorant	0.03	to	1.5

20. (Previously Presented) The composition of claim 1, wherein all components of the composition are granular.

21. (Previously Presented) The composition of claim 4, wherein the colorant has a color that is not readily perceivable to a user until a water-based fluid is added to the composition.

22. (Previously Presented) The composition of claim 5, wherein the plurality of reflective particles are configured to move with other components of the composition when the composition absorbs a volume of water-based fluid.

23. (Previously Presented) The composition of claim 1, wherein the composition further includes a colorant and a plurality of reflective particles.

24. (Previously Presented) The composition of claim 2, wherein the resin is adapted to adhere the superabsorbent polymer and the gelatin when a volume of water-based fluid is added to the composition.

25. (Previously Presented) The composition of claim 1, wherein the composition is reusable and is adapted to absorb a further volume of water-based fluid after an initial volume of water-based fluid has evaporated.

26-28. (Cancelled)

**X. EVIDENCE APPENDIX**

None presented.

**XI. RELATED PROCEEDINGS APPENDIX**

None presented.

Respectfully submitted,


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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence (in triplicate), the attached transmittal, fee transmittal and a check in the amount of \$500 are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on June 24, 2005.

  
David S. D'Ascenzo